

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy )  
Ohio, Inc. for Approval of an Alternative ) Case No. 14-1622-GA-ALT  
Rate Plan Pursuant to Section 4929.05, )  
Revised Code, for an Accelerated Service )  
Line Replacement Program. )

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**POST-HEARING BRIEF  
OF  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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**I. Duke Energy Ohio’s Application for an Accelerated Service Line Replacement Program Should Be Denied.**

Ohio Partners for Affordable Energy (“OPAE”) submits to the Public Utilities Commission of Ohio (“Commission”) OP AE’s post-hearing brief in this proceeding considering the application filed by Duke Energy Ohio, Inc., (“Duke”) for approval of an alternative rate plan pursuant to Section 4929.05, Revised Code (“R.C.”), for an accelerated service line replacement program (“ASRP”) and cost recovery rider for the program. Under the alternative rate plan requirements of R.C. 4929.05, the Commission may authorize a rate plan only if the Commission finds that the application is in substantial compliance with the policy of the State of Ohio specified at R.C. 4929.02 and the alternative rate plan is just and reasonable.

Duke has demonstrated no basis on which the Commission can find the alternative rate plan is in substantial compliance with the policy set forth at R.C.

4929.02 and is just and reasonable. Therefore, this application for an alternative rate plan should be denied.

## **II. Duke Has Not Proven the Need for its ASRP.**

Duke has been replacing its aging cast iron and bare steel gas transmission and distribution mains and associated service lines on an accelerated basis over the past fifteen years in Duke's current Accelerated Main Replacement Program ("AMRP"). Beginning in May 2003, Duke's residential customers funded the AMRP on an accelerated cost recovery basis by paying a monthly AMRP Rider charge, which had grown to \$6.88 per customer per month before the charges were rolled into distribution base rates in Duke's 2012 distribution base rate case. Currently, in addition to base rates and other riders, residential customers pay an AMRP Rider charge of \$3.15 per customer per month. Duke's AMRP will terminate at the end of 2015. OCC Ex. 11 at 6-7.

As Duke's AMRP ends this year, Duke has turned its attention to service lines, both company-owned and customer-owned, that have not already been replaced under the AMRP. The AMRP only replaced those service lines that were connected to a cast iron or bare steel main being replaced under the AMRP. OCC Ex. 12 at 12-13. By proposing a new alternative rate plan to replace service lines, Duke is proposing to continue the accelerated cost recovery commenced with the AMRP through an ASRP Rider.

Specifically, the ASRP proposes to replace service lines that were installed before 1971 and are not composed of plastic or protected steel. Generally, customers own these pre-1971 non-protected service lines proposed

to be replaced under the ASRP. Duke claims that such service lines, even if they are not leaking, are a safety concern because they might leak in the future. OCC Ex. 11 at 7. There are approximately 58,000 pre-1971 bare steel and other unprotected metallic service lines and an additional 28,000 curb-to-meter service lines that are of unknown material.

Duke already replaces leaking service lines that may pose a safety hazard in the normal course of its business. Duke replaces service lines when a significant leak occurs. In addition to replacement of leaking service lines, under Duke's current practice, about 200 to 1,000 non-leaking service lines are replaced each year outside of the AMRP. Under the ASRP, Duke would replace up to 86,000 non-leaking service lines over a ten-year period, and charge customers at least \$320 million. This includes the 58,000 service lines and the expansion with additional costs to replace the 28,000 curb-to-meter customer-owned service lines of unknown material composition. OCC Ex. 11 at 8.

Staff witness Kerry Adkins testified that all measures designed to improve the safety of a distribution system, especially where the costs for implementing the measure will be passed on to customers, should be evaluated in terms of quantifiable safety improvement gained in exchange for the costs. Staff Ex. 3 at 10. It is impossible for a system comprised of a combustible gas being moved under pressure through a man-made piping system to be perfectly safe. *Id.* at 13. This is why efforts to improve the safety of the system should be evaluated in terms of making the system safer and how much the safety gains cost. He testified that there are reasonable and less costly alternatives to the ASRP that

should be explored prior to authorizing Duke to spend \$320 million over ten years. *Id.* at 11. One Staff alternative, increasing leak surveillance activities in order to find and fix service line leaks more quickly, could be implemented almost immediately, whereas the ASRP will be implemented over a ten-year period. *Id.* Staff's alternatives are likely to be much less costly than the ASRP on an annual basis.

In addition, Staff does not believe that Duke provided adequate support for its alternative rate plan. *Tr.* III at 537-538. In the Staff's opinion, Duke did not meet even the minimal requirements to support its application. *Id.* at 539. The application asks customers to reimburse Duke for \$320 million in expenditures over ten years. The Staff asked Duke to provide its rationale for the ASRP and all documents, surveys, studies, and analysis relied upon, but Duke did not provide this information. *Id.* at 541. Duke has not proven that this alternative rate plan is needed. Duke has not examined any alternatives. Duke did not provide any cost benefit analysis. Duke did not provide information on the benefits to customers. *Id.* at 542.

Duke also provided no data on the quantifiable safety improvement it expects to achieve through the ASRP. Even if the ASRP eliminates virtually all service line leaks caused by corrosion, natural forces, and materials and welding deficiencies, this would be only a 25% reduction in service line leaks. Duke has identified excavation damage by third parties as the number one threat to its distribution system, followed by natural forces on cast iron pipe, corrosion of bare and coated steel and cast iron pipes, equipment failures, and materials and

welds. Third-party excavation damage is the number one threat and accounts for 34% of all hazardous service line leaks on Duke's system; it is obvious that the ASRP will not address the number one threat. Excavation leaks were nearly all hazardous, while leaks from corrosion, materials and welds, and natural forces are not usually hazardous. Duke could garner greater safety improvements at much less cost by addressing the risks to its system caused by excavation damage. Staff Ex. 1 at 5. Duke has also provided no quantifiable evidence on how much a potential reduction in service line leaks from corrosion will contribute to overall system safety. Any marginal safety gain as a result of the ASRP should be considered in light of the \$320 million cost over the ten years of the ASRP. In Staff's opinion, the ASRP's purported benefits do not outweigh its costs. Staff Ex. 3 at 14.

Duke should have quantified the benefits it claims in its application. Tr. III at 580. Before Duke is authorized to spend \$320 million, Duke should be required to quantify the benefits, provide evidence, and consider alternatives to the ASRP. Tr. III at 585. At this point, Duke should continue to replace leaking service lines as they leak. Tr. III at 588. Finding leaks and replacing them as they are found on an annual basis is likely to cost considerably less than the ASRP. Tr. III at 591.

Staff also opposed Duke's proposal to recover costs for moving inside meters outside through the ASRP. Staff Ex. 3 at 15. Inside meters and related equipment to regulate pressure coming into the structure are already in place and being recovered in base rates set in Case No. 12-1685-GA-AIR. Expenses

related to maintaining the inside meters and equipment are also already in base rates. Duke has deployed advanced meter reading devices so that Duke no longer has to read meters physically, and customers are paying a return of and a return on utility capital investments for those remote meter reading devices. Utility meter reading expenses are already reduced since the last base rate case. Staff Ex. 3 at 16. Duke will benefit from moving inside meters outside because of reduced expenses, but reduced expenses benefit shareholders between rate cases. Id. at 17. Customers will see their rates rise in the form of annual increases to Rider ASRP in order to reimburse Duke's capital costs to move the meters. Duke may benefit from moving the inside meters outside but customers will pay more through the ASRP. Thus, Staff sees no reason to increase customer rates in order to replace equipment that is already operational and already being recovered in customer rates. Id. at 15-16.

Staff also rejected Duke's proposal to recover costs for reviewing its records to determine the age and composition of an additional 28,000 curb-to-meter service lines. Reviewing records in order to gain knowledge of the system should already be included in Duke's rates that were set in Case No. 12-1685-GA-AIR. The test year in that case was 2012 and the requirement for knowledge of the system was imposed in 2011. Staff Ex. 3 at 18. If the expenses are not already included in rates, they should be treated like any other out-of-test-year expenses incurred by a utility between base rate proceedings and not be recovered.



OCC witness Bruce M. Hayes also testified that Duke has not proven a need for the ASRP and that the increase in charges to customers is not just and reasonable. OCC Ex. 11 at 5. The ASRP will expand the number of service lines replaced from the current 200 to 1,000 per year to 5,800 per year, and possibly up to 8,600 per year. OCC Ex. 11 at 12; Tr. III at 429. Still, the ASRP is unreasonable because the service lines Duke wants to replace include non-leaking lines, which are not hazardous. Even if the lines were leaking, they do not pose a great safety threat. Metallic service lines decay slowly and produce slow and diffused leaks. These leaks can be repaired or replaced in the normal course of business. There is no extraordinary need to replace these service lines in an accelerated manner that would impose significant costs on Duke's customers. OCC Ex. 11 at 13.

OCC witness Hayes explained why decaying steel service lines are generally not an immediate safety threat. There can be pin-prick-size holes with slow leaks. When a small-diameter, curb-to-meter steel service line develops a leak through corrosion, a minimal amount of gas escapes through the pin-prick-sized hole into a diffused area below ground. OCC Ex. 11 at 11. There may be no smell of gas or buildup of gas in the area. Leak inspection crews look for leaks at least every three years, and if a leak is found, in most cases the gas is not immediately shut off, and the repair can be made at the convenience of the repair crew. These slow, small leaks are not similar to leaks in large diameter high-pressure transmission and distribution lines, which must be repaired immediately. OCC Ex. 11 at 12.

Duke has not demonstrated that such an expensive \$320 million, ten-year program will improve reliability or safety in any quantifiable manner. Duke did not provide information on the number of leaks that have occurred on the 58,000 service lines that Duke proposes to be included in the ASRP. It is known, however, that there has been no increase in the total number of repaired leaks on service lines due to corrosion or due to materials and welds. OCC Ex. 12 at 16-18. Duke has reported no incidents to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) where the cause of the leak was attributed to corrosion or materials and welds on service lines in the last decade. OCC Ex. 12 at 20.

Duke has also failed to demonstrate why it cannot continue to replace pre-1971 steel and unprotected metallic service lines at the current pace of approximately 200 to 1,000 per year as part of its standard capital replacement program. OCC Ex. 12 at 21; Tr. III at 429. Duke is not prohibited from replacing any service lines that it determines need to be replaced to provide safe and reliable natural gas service. In the unlikely event that a higher number of service lines need to be replaced, Duke may do so and may also file a base rate case to recover costs that are prudently incurred for replacing service lines in the test year. OCC Ex. 12 at 22. Duke’s current funding for its repair and replacement of service lines in distribution base rates is sufficient for Duke to continue providing safe and reliable service while complying with state and federal mandates without any additional charges to customers. OCC Ex. 12 at 23.

Duke can replace its services lines as Duke determines a need to replace them; it already has the resources in its base rates. But Duke has not proven the need for the ASRP or proven that standard ratemaking is not sufficient. Tr. II at 383. With the ASRP, Duke is trying to overbuild its system. The last bit of safety, which might be gold plating the system or attempting to eliminate a final bit of risk, may well be overkill. Tr. II at 391.

### **III. Federal and State Law do not support the ASRP.**

The Staff Report of Investigation concluded that the ASRP is not just and reasonable and would not result in just and reasonable rates. It is Ohio's policy at R.C. 4929.02 to promote adequate, reliable, and reasonably priced natural gas services and goods, but the policy does not refer to upgrading natural gas distribution systems. Staff Ex. 1 at 4. Given that there is no state policy on upgrading distribution service lines, the only legal basis for the ASRP is as an alternative rate plan under R.C. 4929.05, which must promote adequate, reliable, and reasonably priced natural gas services and goods. Because the ASRP is too costly for the minimal safety improvement it is intended to produce, Duke has not proven that the ASRP will result in just and reasonable rates.

Staff found that the Distribution Integrity Management Program ("DIMP") of PHMSA does not require distribution utilities to replace non-leaking service lines on an accelerated basis as proposed under the ASRP. Nowhere in the DIMP regulations are utilities required to address mere potential risks to the distribution system. Utilities are only required to develop and implement measures to address known risks. Accelerated replacement is not required, nor

is replacement the only method to address risks. Materials can be rehabilitated, repaired, or replaced. PHMSA does not even require that rehabilitation, replacement, or repair take place. PHMSA merely suggests that utilities review their distribution systems to identify what actions need to be taken. Tr. II at 370, 380.

Staff believes that Duke should be required to explore alternative to the ASRP. The Staff recommends that prior to considering the ASRP, the Commission should first require that Duke investigate measures to reduce risk to its system caused by excavation damage and leaking service lines from corrosion. Staff Ex. 1 at 6-7. The Commission should only consider the ASRP if Duke can show empirically that other alternatives do not comply with DIMP regulations, are ineffective, and/or more costly on an annual basis than an ASRP. Id. at 7. The Staff believes that the ASRP is too costly considering the marginal safety gains that it might garner and considering that there are other less costly alternatives that could be pursued that might provide similar or even greater safety enhancements. Prior to even considering the ASRP, Duke should be required to investigate, implement, and measure the effectiveness of other measures to mitigate the safety concerns that the ASRP is designed to address. Id. at 7-8.

OCC witness James D. Williams also testified that the DIMP does not require Duke to replace the 58,000 pre-1971 steel and other unprotected metallic service lines. OCC Ex. 12 at 11. The DIMP requires an effective leak management program, which takes into account the costs and the impact the

program would have on customer bills. The DIMPA rules require an analysis of the distribution system and the identification of ways to address threats. But there is nothing within PHMSA and DIMP that creates a sense of urgency for replacement of pre-1971 services lines. Tr. III at 448. Duke's current leak management program already complies with all state and federal standards and rules. There is no proof to suggest that Duke's current leak management program will not continue to be compliant with state and federal mandates without burdening customers with a \$320 million bill. OCC Ex. 12 at 12.

Given the high cost of this unnecessary program, Duke's ASRP does not result in reasonably priced natural gas service as required by R.C. 4929.02. Duke's proposal to replace service lines that are not leaking and not hazardous is not reasonable. The ASRP will lead to excessive charges to customers and unreasonably priced distribution service for ten years. Duke currently has a fixed delivery charge of \$33.03 per month in addition to usage based charges and nine riders. The ASRP will add yet another fixed charge to Duke's already excessive fixed charges. An unnecessary additional fixed monthly charge for an unnecessary program with no proven benefits to customers only compounds problems Duke's customers are having paying their bills, contrary to the state policy to promote adequate, reliable and reasonably priced natural gas services and goods. R.C. 4929.02; OCC Ex. 12 at 28

Ohio Administrative Code Rule 4901:1-19-06 makes Duke's current distribution rates an issue in this alternative rate plan proceeding. Under the Rule at (C), an infrastructure investment program is considered an increase in

rates. The applicant's most recent rate case is specifically at issue. The Staff Report in Duke's last rate case, Case No. 12-1685-GA-AIR, found that Duke's distribution rates should be reduced. *Duke Energy Ohio Inc.*, Case No. 12-1685-GA-AIR, et al., Opinion and Order (November 13, 2013) at 3. Duke's rates resulted in Duke over-earning its revenue requirement. *Id.* The Stipulation and Recommendation filed in the rate case on April 2, 2013 provided for no revenue increase, but did not require a revenue decrease. *Id.* at 12.

The rate case is now on appeal to the Ohio Supreme Court. Supreme Court Case No. 14-328. The appellants, including OPAE, have alleged to the Court that the recovery of costs approved by the Commission associated with the costs of cleaning up Duke's manufactured gas plants ("MGP") violates Ohio law. In spite of all efforts to stay this MGP cost recovery through the Commission-approved MGP Rider pending the appeal, Duke continues to collect costs associated with its MGP through its MGP Rider. If the appellants prevail in their appeal, ratepayers will need substantial refunds in order to be made whole. Yet the MGP Rider is only one example of Duke's ability to over-earn its revenue requirement under current rates. As the Staff Report in the last base rate case demonstrated, Duke is already over-earning its revenue requirement for gas distribution service.

It is impossible to imagine that Duke's current rates for gas distribution service are not already unlawful, excessive, unjust and unreasonable. An unnecessary alternative rate plan proposing \$320 million of additional costs,

including additional fixed costs, cannot be just and reasonable if the underlying base rates and other cost recovery riders are not just and reasonable.

#### **IV. Conclusion**

Duke has the burden of proving that its ASRP conforms to R.C. 4929.05, which requires that the alternative rate plan meets the state's policy goals at R.C. 4929.02 and results in just and reasonable rates. Duke has not demonstrated that its ASRP meets the state's policy goals or results in just and reasonable rates.

There is no need for an alternative rate plan for Duke to expedite replacement or cost recovery for replacing pre-1971 service lines. These lines are not hazardous and there is no reason why replacement of these lines cannot continue to take place in the normal course of Duke's natural gas distribution business, as replacement currently takes place.

No law requires or supports an alternative rate plan for accelerated cost recovery for non-leaking, non-hazardous customer-owned service lines. Duke has provided no information on safety problems associated with the service lines it seeks to replace. Duke has provided no evidence to support its contention that this accelerated rate plan is necessary for safety or will even improve safety. Duke has not explained why accelerated cost recovery through yet another rider is necessary and why cost recovery for replacing service lines cannot be accomplished as it is now through base rates.

Therefore, Duke's application for an alternative rate plan for approval of the proposed ASRP should be denied.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Post-Hearing Brief was served electronically upon the following parties identified below in this case on this 9th day of December 2015.

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